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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
HO, CHUONG T	
ART UNIT	PAPER NUMBER
2664	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/611,923	PESHKIN, JOEL D.	
	Examiner	Art Unit	
	CHUONG T. HO	2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any. earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-26 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claims 1-26 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-4, 11-15, 16, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cai et al. (U.S.Patent No. 5,550,908) in view of Olafsson et al. (U.S.patent No. 6,912,276 B1 "Assignee: Credit Suisse First Boston").

Regarding to claim 1, see figure 3, col. 8, lines 65-67, col. 9, lines 1-3, Cai et al. discloses at the time that an incoming call from the third party arrives at the SPCS 110, the communication path between the local modem 124 (a first communication layer) and the remote modem 144 (second communication layer) is temporarily interrupted. Then the alerting sequence is inserted by the SPCS and sent to the first telephone device 100 where the alerting sequence is easily detected (see col. 8, lines 65-67, col. 9, lines 1-3); comprising:

- Interrupting said communication (see col. 8, lines 65-67, col. 9, lines 1-3).

However, Cai et al. is silent to disclosing receiving a request from first communication layer; and responding to request.

See figure 2, Olafsson et al. discloses a system of spoofing a first communication layer in communication with a second communication layer (see col. 2, lines 5-40, the

communication system comprising a remote modem and a local modem communicatively coupled thereto), the system comprising the steps of:

- Receiving a request from first communication layer (see col. 3, lines 55-59, the modem 1 receives call waiting signaling (a request) from the switching network 21 (due to an incoming call from a telephone device 31 at a premises 33), the modem 1 communicates a request to hold to the modem 11);
- Responding to request (see col. 4, lines 9-10, the switching network 21 respond by connecting the incoming call to the telephone line 10, col. 4, lines 52-54, the modem 1 responds to such a request by establishing a hold condition with the modem 11 and using three-way calling functionality to gain a dial tone on the telephone 10).

Both Cai and Olafsson discloses remote modem and local modem. Olafsson recognizes receiving a request from first communication layer; and responding to request. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Cai with the teaching of Olafsson to receive a request from first communication layer; and responding to request in order to free to use telephone communication session while the data communication has been placed on hold.

3. Regarding to claim 2, Olafsson et al. discloses interrupting step includes placing communication on hold (see col. 3, lines 35-40).

4. Regarding to claim 3, Olafsson et al. discloses communication is via communication link between a first modem and a second modem (see col. 2, lines 5-40,

the communication system comprising a remote modem and a local modem communicatively coupled thereto).

5. Regarding to claim 4, Olafsson et al. discloses first modem is in communication with first communication layer and second modem is in communication with second communication layer (see col. 2, lines 5-40).

6. Regarding to claim 11, see figure 3, col. 8, lines 65-67, col. 9, lines 1-3, Cai et al. discloses at the time that an incoming call from the third party arrives at the SPCS 110, the communication path between the local modem 124 (a first communication layer) and the remote modem 144 (second communication layer) is temporarily interrupted. Then the alerting sequence is inserted by the SPCS and sent to the first telephone device 100 where the alerting sequence is easily detected (see col. 8, lines 65-67, col. 9, lines 1-3); comprising:

- Interrupting said communication (see col. 8, lines 65-67, col. 9, lines 1-3).

However, Cai et al. is silent to disclosing transmitting a first signal to first communication layer, wherein first communication layer expects to receive first signal.

See figure 2, Olafsson et al. discloses a system of spoofing a first communication layer in communication with a second communication layer (see col. 2, lines 5-40, the communication system comprising a remote modem and a local modem communicatively coupled thereto), the system comprising the steps of:

- transmitting a first signal to first communication layer (the modem 1) (see col. 3, lines 55-59, the modem 1 receives call waiting signaling (a request) from the switching network 21 (due to an incoming call from a telephone device 31 at a

premises 33), the modem 1 communicates a request to hold to the modem 11), wherein first communication layer expects to receive first signal (see col. 3, lines 55-59);

Both Cai and Olafsson discloses remote modem and local modem. Olafsson recognizes receiving a request from first communication layer; and responding to request. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Cai with the teaching of Olafsson to receive a request from first communication layer; and responding to request in order to free to use telephone communication session while the data communication has been placed on hold.

7. Regarding to claim 12, Olafsson et al. discloses first signal is a tone (see col. 3, lines 56-57).

8. Regarding to claim 13, Olafsson et al. discloses communication is via a communication link, and wherein first communication layer expects to receive first signal via communication link (see col. 2, lines 5-40).

9. Regarding to claim 14, Olafsson et al. discloses the step of receiving a second signal from first communication layer prior to step of transmitting first signal (see col. 2, lines 5-40, col. 3, lines 39-41, col. 3, lines 56-57).

10. Regarding to claim 15, Olafsson et al. discloses step of interrupting causes a pause in communication (see col. 3, lines 39-41, lines 56-57, col. 2, lines 5-40).

11. Regarding to claim 16, see figure 3, col. 8, lines 65-67, col. 9, lines 1-3, Cai et al. discloses at the time that an incoming call from the third party arrives at the SPCS 110,

the communication path between the local modem 124 (a first communication layer) and the remote modem 144 (second communication layer) is temporarily interrupted. Then the alerting sequence is inserted by the SPCS and sent to the first telephone device 100 where the alerting sequence is easily detected (see col. 8, lines 65-67, col. 9, lines 1-3); comprising:

- Gathering an information from said second communication layer (see col. 8, lines 65-67, col. 9, lines 1-3).

However, Cai et al. is silent to disclosing transmitting a first signal to first communication layer, wherein first communication layer expects to receive first signal.

See figure 2, Olafsson et al. discloses a system of spoofing a first communication layer in communication with a second communication layer (see col. 2, lines 5-40, the communication system comprising a remote modem and a local modem communicatively coupled thereto), the system comprising the steps of:

- transmitting a first signal to first communication layer (the modem 1) (see col. 3, lines 55-59, the modem 1 receives call waiting signaling (a request) from the switching network 21 (due to an incoming call from a telephone device 31 at a premises 33), the modem 1 communicates a request to hold to the modem 11), wherein first communication layer expects to receive first signal (see col. 3, lines 55-59);

Both Cai and Olafsson discloses remote modem and local modem. Olafsson recognizes receiving a request from first communication layer; and responding to request. Thus, it would have been obvious to one of ordinary skill in the art at the time of

the invention to modify the system of Cai with the teaching of Olafsson to receive a request from first communication layer; and responding to request in order to free to use telephone communication session while the data communication has been placed on hold.

12. Regarding to claim 20, see figure 3, col. 8, lines 65-67, col. 9, lines 1-3, Cai et al. discloses at the time that an incoming call from the third party arrives at the SPCS 110, the communication path between the local modem 124 (a first communication layer) and the remote modem 144 (second communication layer) is temporarily interrupted. Then the alerting sequence is inserted by the SPCS and sent to the first telephone device 100 where the alerting sequence is easily detected (see col. 8, lines 65-67, col. 9, lines 1-3); comprising:

- A controller (SPCS 110, central switching office 108) ; a first communication interface (106) controlled by controller; a second communication interface (112) controlled by controller; and a spoofing module controlled by controller (see col. 8, lines 65-67, col. 9, lines 1-3).

However, Cai et al. is silent to disclosing spoofing module monitors first communication interface and causes a signal to be transmitted through said communication interface.

see figure 2, Olafsson et al. discloses a system of spoofing a first communication layer in communication with a second communication layer (see col. 2, lines 5-40, the communication system comprising a remote modem and a local modem communicatively coupled thereto), the system comprising the steps of:

- Wherein spoofing module (modem 1) monitors first communication link and cause a signal to be transmitted through communication link (see col. 2, lines 5-40, col. 3, lines 39-41, lines 56-57).

Both Cai and Olafsson discloses remote modem and local modem. Olafsson recognizes receiving a request from first communication layer; and responding to request. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Cai with the teaching of Olafsson to receive a request from first communication layer; and responding to request in order to free to use telephone communication session while the data communication has been placed on hold.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 5-10, 17-19, 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined system (Cai – Olafsson) in view of Johnson et al. (U.S.Patent No. 6,765,901 B1).

Regarding to claims 5, 17, 24, 25, the combined system (Cai – Olafsson) discloses the limitations of claim 1 above.

However, the combined system (Cai – Olafsson) is silent to disclosing communication layer is a PPP layer.

Johnson et al. discloses if the packet analyzer detects that a PPP packet contains a PPP sub-protocol , when it detects the PPP FCS field it can instruct the modem to wait only 2ms before sending the data.....optimization can occur by looking at the command code of the PPP sub-protocol packet. An example matrix of command types and the corresponding latency setting shown in table 2 below. Protocol LCP (Echo-Request), (Echo-reply)...NCP (Configuration Request) (Configuration Ack) (see col. 10, lines 55-67, col. 11, lines 1-22); comprising:

Communication layer is a PPP layer (see col. 10, lines 55-67, col. 11, lines 1-22).

Both Cai, Olafsson and Johnson discloses the modem to communicate on an network. Johnson et al. recognizes the communication layer is a PPP layer. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined system (Cai – Olafsson) with the teaching of Johnson to provide the PPP communication PPP layer in order to response to the PPP layer request.

14. Regarding to claims 6, 21, 26, Johnson discloses request is an Echo-Request (see col. 10, lines 55-67, col. 11, lines 1-22).

15. Regarding to claims 7, 22, Johnson discloses response is an Echo-Response (see col. 10, lines 55-67, col. 11, lines 1-22).

16. Regarding to claims 8, 18, 23, Johnson discloses acquiring second communication layer's magic number (0x01, 0x02, 0x03, 0x04,.....,0x0A, 0x0B) during communication (see col. 11, lines 1-22).

17. Regarding to claims 9, 19, Johnson discloses magic number is acquired from a Configure-Request packet (see col. 11, lines 1-22).

18. Regarding to claim 10, Johnson discloses magic number is acquire from a Configure-Ack packet (see col. 11, lines 1-22).

Double Patenting

19. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13, 34 of U.S. Patent No. 6,785,371. Although the conflicting claims are not identical, they are not patentably distinct from each other because interrupting communication (see claim 13, col. 32, line 41, claim 34, col. 34, line 10); receiving a request from first communication layer; and responding to request (see claim 13, col. 32, lines 49-53, claim 34, col. 34, line 10).

20. Claim 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13, 34 of U.S. Patent No. 6,785,371. Although the conflicting claims are not identical, they are not patentably distinct from each other because interrupting communication (see claim 13, col. 32, line 41, claim 34, col. 34, line 10); transmitting a first signal to first communication layer, wherein first communication layer expects to receive first signal (see claim 13, col. 32, lines 43-45, claim 34, col. 34, line 13-15).

21. Claim 16 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 of U.S. Patent No. 6,785,371. Although the conflicting claims are not identical, they are not patentably distinct from each other because gathering (receiving) an information (an alert signal) from second communication layer (first modem) (see claim 1, col. 31, line 61-62), and transmitting a

signal to said first communication layer (second modem), wherein signal (third tone) includes information(see claim 1, col. 32, lines 1-3).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHUONG T. HO whose telephone number is (571) 272-3133. The examiner can normally be reached on 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

07/06/05

WELLINGTON CHIN
ERVISORY PATENT EXAMINER